

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 28, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP1303**

**Cir. Ct. No. 2011TR9825**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**VILLAGE OF SPRING GREEN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MICHAEL D. DEIGNAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Sauk County:  
PATRICK TAGGART, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.<sup>1</sup> Michael D. Deignan appeals from a judgment of conviction for operating a vehicle while under the influence of an intoxicant, as a first offense, in violation of WIS. STAT. § 346.63(1)(a). Deignan

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

contends that his arrest was not lawful because the arresting officer did not have authority to arrest Deignan outside the Village of Spring Green. I conclude that the arresting officer was engaged in fresh pursuit under WIS. STAT. § 175.40(2) and therefore was authorized to perform the arrest. Accordingly, I affirm.

## **BACKGROUND**

¶2 On March 5, 2011, Village of Spring Green Officer Michael Havlik was traveling eastbound on Highway 14. Havlik turned around just west of the Wisconsin River Bridge, pursuant to his normal practice. After turning around, Havlik was traveling west behind two other vehicles. Deignan's vehicle was two cars in front of Havlik. While on Highway 14, near Rainbow Road in the Village of Spring Green, Havlik observed the tail lights of Deignan's vehicle deviate within the traffic lane. As Deignan's vehicle and Havlik's vehicle approached the intersection of Highways 14 and 23, the vehicle between Deignan's and Havlik's turned right onto Highway 23. As a result, Havlik was directly behind Deignan at the intersection and observed the vehicle's license plate number.

¶3 Deignan turned left at the intersection and began traveling south on Highway 23. After driving a short distance, Deignan pulled into a gas station located at the intersection of Highways 14 and 23. Havlik proceeded southbound on Highway 23 past the gas station, but observed, through his side mirror, Deignan turn around in the gas station's lot and return toward the intersection of Highways 14 and 23. In Havlik's experience, such driving behavior "appeared to be somebody that was trying to avoid police contact."

¶4 Havlik turned his vehicle around and stopped behind Deignan at the intersection's stoplight. Havlik contacted a Village of Arena officer and confirmed a previous call about a suspicious vehicle. After confirming the license

plate number, Havlik informed the Village of Arena officer that Havlik was behind the suspicious vehicle.

¶5 Meanwhile, Deignan turned left at the intersection and resumed travel westbound on Highway 14. Havlik also turned left, continuing his pursuit of Deignan. Havlik observed Deignan's vehicle "going back and forth between the center line and the fog line."

¶6 Havlik contacted Sauk County dispatch to see if any available deputies were in the area. Havlik continued to follow Deignan, waiting for a response from Sauk County. Deignan turned right onto Pearl Street and Havlik followed. Deignan then turned left into a private driveway and parked. Havlik continued northbound on Pearl Street until he found a safe place to turn around. Havlik drove southbound on Pearl Street and observed Deignan's vehicle with its right turn signal activated at the stop sign where Pearl Street and Highway 14 intersect. Deignan turned right and Havlik again followed. Sauk County dispatch confirmed with Havlik that no available deputies were in the area. Havlik initiated a traffic stop and arrested Deignan for operating while intoxicated. The traffic stop occurred in Sauk County, but not within the Village of Spring Green. Havlik is not deputized by Sauk County.

¶7 On November 16, 2011, Deignan was found guilty of operating while intoxicated in municipal court. Deignan appealed to the circuit court for a trial de novo. In addition to numerous pretrial motions, Deignan filed motions to suppress evidence and to dismiss, alleging that Havlik lacked authority to arrest because Havlik was acting outside of his territorial jurisdiction. The circuit court held a hearing, denied the motion, and entered judgment based on Deignan's no-contest plea. Deignan now appeals.

## DISCUSSION

¶8 On appeal, Deignan does not argue that Havlik did not comply with WIS. STAT. § 175.40(2), which authorizes arrests when in fresh pursuit anywhere in the state. Rather, Deignan argues that: (1) WIS. STAT. § 175.40(6), which authorizes arrests pursuant to written policies in response to emergency situations or commission of felonies anywhere in the state, concerns the same subject matter as § 175.40(2); (2) § 175.40(6) applies because it is the more specific statute; (3) the arresting agency, the Village of Spring Green, failed to comply with certain requirements under § 175.40(6), thereby rendering Deignan’s arrest unlawful; and (4) the circuit court has the discretion to suppress evidence as a remedy for a violation of § 175.40.

¶9 Deignan’s argument presents an issue of statutory interpretation, which the appellate court reviews de novo. *State v. Brandt*, 2009 WI App 115, ¶4, 321 Wis. 2d 84, 772 N.W.2d 674. The purpose of statutory interpretation is to discern the intent of the legislature. *State v. Byers*, 2003 WI 86, ¶13, 263 Wis. 2d 113, 665 N.W.2d 729. When we interpret a statute, we begin with the statute’s plain language, as we assume the legislature’s intent is expressed in the words it used. *Orion Flight Servs., Inc. v. Basler Flight Serv.*, 2006 WI 51, ¶16, 290 Wis. 2d 421, 714 N.W.2d 130. “If we conclude the statutory language is plain, then we apply its plain meaning.” *JP Morgan Chase Bank, NA v. Green*, 2008 WI App 78, ¶24, 311 Wis. 2d 715, 753 N.W.2d 536.

¶10 Deignan argues that the fresh pursuit statute, WIS. STAT. § 175.40(2), and the mutual aid statute, WIS. STAT. § 175.40(6), concern the same subject matter, and that § 175.40(6) controls because it is more specific. *See Brandt*, 321 Wis. 2d 84, ¶5 (“In cases where two or more statutes relate to the

same subject matter, ‘the more specific statute controls over the general statute.’” (citation omitted)).<sup>2</sup> The plain language of each statute refutes Deignan’s argument.

¶11 WISCONSIN STAT. § 175.40(2) provides:

For purposes of civil and criminal liability, any peace officer may, when in fresh pursuit, follow anywhere in the state and arrest any person for the violation of any law or ordinance the officer is authorized to enforce.

¶12 WISCONSIN STAT. § 175.40(6) states:

(a) A peace officer outside of his or her territorial jurisdiction may arrest a person or provide aid or assistance anywhere in the state if the criteria under subds. 1. to 3. are met:

1. The officer is on duty and on official business.

2. The officer is taking action that he or she would be authorized to take under the same circumstances in his or her territorial jurisdiction.

3. The officer is acting to respond to any of the following:

a. An emergency situation that poses a significant threat to life or of bodily harm.

b. Acts that the officer believes, on reasonable grounds, constitute a felony.

(b) A peace officer specified in par. (a) has the additional arrest and other authority under this subsection only if the peace officer’s supervisory agency has adopted

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<sup>2</sup> Deignan appears to conflate his specific statute controls argument with an argument that the two statutes also conflict, without developing the conflict. “If we are construing two statutes that seemingly conflict, we will attempt to harmonize them so that each is given full force and effect.” *O’Connell v. O’Connell*, 2005 WI App 51, ¶6, 279 Wis. 2d 406, 694 N.W.2d 429. My conclusion that these two statutes address different situations would effectuate such harmonization even if Deignan had shown that they seemingly conflict.

policies under par. (d) and the officer complies with those policies.

(c) For purposes of civil and criminal liability, any peace officer outside of his or her territorial jurisdiction acting under par. (a) is considered to be acting in an official capacity.

(d) In order to allow a peace officer to exercise authority under par. (a), the peace officer's supervisory agency must adopt and implement written policies regarding the arrest and other authority under this subsection, including at least a policy on notification to and cooperation with the law enforcement agency of another jurisdiction regarding arrests made and other actions taken in the other jurisdiction.

¶13 Both statutes are part of WIS. STAT. § 175.40, entitled “Arrests; assistance.” And, both statutes address the authority of police officers to effectuate arrests “anywhere in the state.” However, the statutes by their plain language address different situations and impose different requirements relevant to those distinct situations.

¶14 WISCONSIN STAT. § 175.40(2) authorizes an officer to arrest while engaging “in fresh pursuit” anywhere in the state. WISCONSIN STAT. § 175.40(6) authorizes an officer to “arrest a person or provide aid or assistance” anywhere in the state pursuant to written policies related to inter-agency cooperation, in response to an emergency or a suspected felony. The two statutes address different exercises of extra-territorial authority by peace officers in the state. Neither is more specific than the other; in each the legislature provided the parameters for officers to act outside their jurisdictions in distinctly different scenarios. Accordingly, Deignan’s argument that § 175.40(6) rather than § 175.40(2) must apply because it is the more specific of two statutes that address the same subject matter, fails.

¶15 Deignan offers no other impediment to the application of *WIS. STAT. § 175.40(2)* to this case. Accordingly, his argument that Havlik lacked the authority to stop him outside the village limits of Spring Green because the Village had not adopted written policy materials pursuant to *WIS. STAT. § 175.40(6)* is of no import. To the extent that Deignan may be arguing that the arrest also did not comply with § 175.40(2), we conclude that his argument is refuted by the record.

¶16 Whether Havlik was in fresh pursuit of Deignan pursuant to *WIS. STAT. § 175.40(2)* involves the application of a statute to a particular set of facts. As such, it is a question of law that the appellate court decides without deference to the circuit court's decision. *See City of Brookfield v. Collar*, 148 Wis. 2d 839, 841, 436 N.W.2d 911 (Ct. App. 1989).

¶17 Wisconsin courts use a three-part test to determine whether an officer engaged in fresh pursuit:

First, the officer must act without unnecessary delay. Second, the pursuit must be continuous and uninterrupted, but there need not be continuous surveillance of the suspect. Finally, the relationship in time between the commission of the offense, the commencement of the pursuit, and the apprehension of the suspect is important. The greater the length of time, the less likely it is that the circumstances under which the police act are sufficiently exigent to justify an extrajurisdictional arrest.

*Id.* at 842-43 (internal citations omitted).

¶18 Havlik's pursuit and stop of Deignan's vehicle met the three elements of fresh pursuit. Havlik continued to follow Deignan after Deignan deviated across the center traffic lane on Highway 14 in the Village of Spring Green, and after Havlik observed erratic driving and evasive behavior. While

Havlik did not immediately initiate the traffic stop, no unnecessary delay occurred, as Havlik was waiting to confirm with Sauk County dispatch that there were no available deputies at that time. Second, Havlik's pursuit was continuous and uninterrupted because he followed Deignan from the time Havlik first observed suspicious driving until the time he initiated the traffic stop. Finally, although Havlik did not initiate the traffic stop immediately after observing Deignan cross the center line, the circumstances justify the small lapse in time before the extrajurisdictional arrest was made. As previously noted, Havlik was waiting for Sauk County dispatch to confirm that there were no deputies with jurisdiction to initiate the traffic stop. Once confirmation was made, Havlik promptly initiated the traffic stop. Because Havlik's actions met the three elements of fresh pursuit, Havlik had authority under WIS. STAT. § 175.40(2) to stop and arrest Deignan.

¶19 Because Havlik was in fresh pursuit of Deignan and his extrajurisdictional arrest of Deignan was proper, the circuit court properly refused to suppress any evidence collected by Officer Havlik as a result of the stop.<sup>3</sup> It is therefore unnecessary to address Deignan's remaining argument concerning suppression as a remedy for a violation of WIS. STAT. § 175.40. See *Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (when a decision on one issue is dispositive, the court need not reach other issues raised).

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<sup>3</sup> The circuit court denied the motion to suppress based on *City of Waukesha v. Gorz*, 166 Wis. 2d 243, 246, 479 N.W.2d 221 (Ct. App. 1991), which held that an officer may make a citizen's arrest when outside of his or her jurisdiction when the officer witnesses "a felony or a serious misdemeanor affecting a breach of the peace." Because appellate review is de novo, and the application of WIS. STAT. § 175.40(2) is dispositive, I do not reach this topic. See *State v. Earl*, 2009 WI App 99, ¶18 n.8, 320 Wis. 2d 639, 770 N.W.2d 755 (noting that on appeal the court may affirm on different grounds than those relied on by the trial court).



## CONCLUSION

¶20 For the reasons stated above, I affirm the judgment of the circuit court.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

